

REMARKS

Independent claims 1, 13 and 49 have been amended to recite, in substance, that a portion of a header wall is torn to connect a tear notch disposed at one elevation higher than the top of the slider with a slit that extends from that same elevation to a lower elevation lower than the bottom of the slider. This arrangement is not shown or suggested by the prior art applied in the latest Final Rejection, as explained in detail below.

In ¶ 7 of the Office Action, claims 1, 3, 5-11, 13, 14, 16-22, 49, 52 and 54 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Strand *et al.* (US 6,360,513) in view of Keller (US 3,255,869) or Deutschländer (US 4,147,583) or Kopp *et al.* (US 5,371,997). The Applicants traverse this ground of rejection for the following reasons.

At the outset, the Applicants object to the Examiner's characterization of a slit as being a type of line of weakness or as being functionally equivalent to a line of weakness. This equivalence flies in the face of the fact that the slit has no structural weakness because it has no connecting structure. The slit is formed by adjacent parallel edges in the web where a cut has been made. There is neither strength nor weakness at the interface between the cut edges because there is no connecting structure.

The Examiner's equation of a slit with a line of weakness also flies in the face of the definition of "structural

weakness" set forth in Strand. The Strand patent defines "structural weakness" as follows:

The term structural weakness is generally used to describe that area of the reclosable bag that is intentionally designed to be easily torn by the consumer to provide for evidence of tampering and to allow for easy exposure of the zipper mechanism or assembly. Nonetheless, it should be understood that use of the term structural weakness should include, without limiting its meaning, structures such as perforation, scores, microperforations, and multiple laminate materials which include a layer having an area of material or materials which are specifically designed to be easily torn. Accordingly, it should be understood that the areas of structural weakness are intentionally designed to create a predetermined tear path, which may or may not be hermetic.

[Strand, col. 3, lines 36-50; emphases added.] Thus, by definition set forth in the Examiner's primary reference, a slit cannot be deemed a line of structural weakness since it neither "creates a predetermined tear path" (since the slit has no material to tear) nor "provide[s] for evidence of tampering".

Turning attention to the specific combinations proposed by the Examiner, Strand discloses a reclosable package having a tear notch 24 disposed at an elevation higher than the top of a slider and further having a horizontal score line 12 disposed at an elevation lower than the bottom of the slider. Strand further discloses that the header can be torn diagonally from the tear notch to the tear line along diagonal sections 13 of the score line (or weakened area) 12. The Examiner asserts that it would have been obvious to substitute a slit for the diagonal section 13 of the Strand weakened area 12 in view of the teachings of Keller or Deutschländer or Kopp. The Applicants respectfully

disagree.

In Deutschländer, the oblique or diagonal slits 24' and 24" start at the side edges of the header. If the teaching of Deutschländer were to be incorporated in Strand, then the tear notches 24 of Strand would not be needed, since those tear notches also start at the side edges of the header. Instead, the oblique or diagonal slits of Deutschländer would be substituted for both the tear notch 24 and the diagonal section 13 of the tear line 12 in Strand. Applicants' amended independent claims 1, 13 and 49 would not read on such a combination, since each claim recites both a tear notch and a slit, which become connected when a portion of the header wall disposed therebetween is torn. Moreover, the Applicants submit that it would not have been obvious to place the slits of Deutschländer in the header of Strand at positions away from the side edges of the header.

The foregoing arguments apply equally well to the combination of Strand with Kopp. Like Deutschländer, the Kopp patent also discloses an oblique or diagonal slit 39 (see Figure 17) that starts at the side edge of the header. To incorporate the slit 39 of Kopp in the header of Strand - starting at the header side edge - would again render the tear notch 24 of Strand superfluous. Nor can such a slit provide tamper evidence. Furthermore, the horizontal slits 9, 9', 9'', 29 and 29' shown in other embodiments of Kopp are the functional equivalent of extended tear notches and do not provide a means for changing

the level at which tearing occurs, as in Applicants' structure.

Lastly, the Keller patent discloses a horizontal tear line comprising a series of slits. While it might be obvious to substitute a multiplicity of short slits, as taught by Keller, in place of the structural weakness 12 (with diagonal section 13) as disclosed by Strand, the result would not be Applicants' claimed invention. In particular, there would be a multiplicity of short slits aligned along a diagonal, not a single slit extending from an elevation higher than the slider top to an elevation lower than the slider bottom.

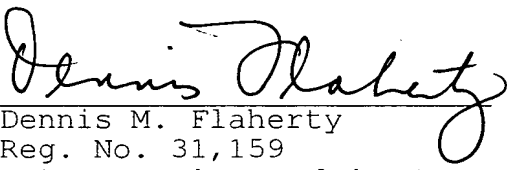
Accordingly, the combination of Strand and Keller is insufficient to make a *prima facie* case for obviousness since a limitation present in each of Applicants' independent claims would still be missing from the proposed combination of prior art teachings, namely, "a . . . slit traversing a range of elevations encompassing . . . first and second elevations", wherein the first elevation is at or higher than an elevation of the slider top, and the second elevation is lower than an elevation of the slider bottom.

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In view of the foregoing, the Applicants submit that this application is now in condition for allowance. Reconsideration of the application and allowance of claims 1, 3, 5-11, 13, 14, 16-22, 49, 52 and 54 are hereby requested. Since it is believed that generic claims are now allowable, examination and allowance of claims 12, 23, 51 and 53 are also requested, which were previously withdrawn from further consideration.

Respectfully submitted,

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Date

  
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